**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF MARYLAND**

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| **JACK A. DAWSON,** | * | |
| | * | |
| **Plaintiff** | * | |
| | * | |
| **v.** | * | **Civil No. CCB-06-2885** |
| | * | |
| **DONALD C. WINTER,** | * | |
| ***Secretary of the Navy, et al.,*** | * | |
| | * | |
| **Defendants.** | * | |
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**AMENDED Memorandum**

Defendant Donald C. Winter, Secretary of the Navy (the "Secretary"), moves for summary judgment in this case where Plaintiff Jack A. Dawson ("Dawson") challenges the Navy's decision, pursuant to 10 U.S.C. § 2005, to seek recoupment of $88,784.08 in educational expenses disbursed during Dawson's nearly three years at the United States Naval Academy in Annapolis, Maryland between 2002 and 2005. Dawson asks this court to strike the Secretary's motion for summary judgment pursuant to Fed. R. Civ. P. 12(f), and he cross-moves for summary judgment. The Secretary opposes Dawson's cross-motion. The motions have been fully briefed, and no hearing is necessary. *See* Local Rule 105.6.

For the reasons that follow, this court will deny Dawson's motion to strike as well as his cross-motion and will grant the Secretary's motion.

## I. Background

Dawson accepted an appointment as a midshipman in the United States Naval Academy (the "Academy") on May 6, 2002 by executing an "Agreement to Serve and Degree Requirements," which provided, in part:

> It is further agreed, as a condition to receiving advanced education assistance, as these terms are defined in Title 10, U.S. Code, Section 2005 (e)(1), (2), that should I *voluntarily or because of misconduct* fail to complete the applicable period of active duty incurred as the result of graduation or disenrollment, I will reimburse the United States for the cost of the education received at the Naval Academy in an amount that bears the same ratio to the total cost of the education provided me as the unserved portion of active duty bears to the total period of active duty for which I hereby agree to serve.

(Def.'s Mem. in Supp. Summ. J. Mot. [hereinafter "Def.'s Mem."], Ex. A at 37.) At the start of his second class year, Dawson signed a one page "Obligation/Recoupment Acknowledgment" commitment to service document in which he accepted that he was incurring an enlisted service obligation and that the Secretary of the Navy may, in place of requiring enlisted service, direct the recoupment of educational costs. (*Id*.) By signing the document, Dawson confirmed his understanding that a breach of the agreement to serve included an involuntary discharge for conduct that was not satisfactory and that costs would be calculated retroactive to the date of his appointment as a midshipman, and would continue to accrue based on the expense of his education until the time of his graduation. (*Id*.)

On June 15, 2005, before Dawson began his first-class (senior) year at the Academy, the Secretary, through the Assistant Secretary of the Navy for Manpower and Reserve Affairs, approved a recommendation by the Superintendent to disenroll Dawson from the Academy for unsatisfactory conduct and to recommend recoupment of Dawson's educational expenses in the amount of $88,784.08. Specifically, Dawson was disenrolled and recommended for recoupment based upon

(1) his unauthorized consumption of alcohol in violation of a loss of class privileges status that had been imposed after he previously became seriously publicly intoxicated[1] and his absence without permission; and (2) his "[c]ontinued disregard of institutional standards and the lack of demonstrated initiative expected of a future Naval officer[.]"[2] (Def.'s Mem., Ex. A at 9.)

In approving Dawson's disenrollment, the Secretary reviewed several documents,[3] including the Superintendent's recommendation for Dawson's disenrollment for unsatisfactory conduct dated May 2, 2005. The Superintendent's recommendation was written following a hearing with Dawson before the Commandant on February 17, 2005, a review of Dawson's misconduct and Academy record, and the Superintendent's personal interview with Dawson. (*Id*. at 8.)

Dawson was discharged from the Navy on June 16, 2005. (*Id*. at 40-41.) Dawson on July 30, 2005 petitioned the Board of Corrections of Naval Records (the "BCNR") asking for the

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[1] The Commandant of Midshipmen at the Academy on August 4, 2004 found Dawson "guilty of underage drinking and service discrediting public intoxication for getting so intoxicated [that he] vomited in a bus, and a cab, and had to be taken to the hospital by the cab driver[.]" (Def.'s Mem., Ex. A at 43.) When medically tested at the hospital, Dawson's blood alcohol count was found to be .28. (*Id*. at 22, 47.) As a result of this incident, which occurred on a summer cruise in 2004 in San Diego, Dawson was placed on a loss of class privileges status until August 30, 2005, and was informed that "drinking alcohol was not authorized" while serving in this status. (*Id*. at 22; 56-57.)

[2] On the night of January 15, 2005, Dawson consumed three beers while "on liberty" with his parents and was absent without authority for less than 24 hours and more than 30 minutes in violation of his loss of class privileges. (Def.'s Mem., Ex. A at 43.)

[3] According to the Secretary (Def.'s Mem. at 2 n.3), the complete list of documents reviewed in deciding to disenroll Dawson included:

-the Superintendent's May 2, 2005 recommendation letter for disenrollment (*Id*., Ex. A at 8);

-the Superintendent's March 30, 2005 memorandum recommending disenrollment (*Id*., Ex. A. at 9-10);

-the Staff Judge Advocate's notice to Dawson of potential reimbursement for advanced education (*Id*., Ex. A at 59);

-Dawson's April 4, 2005 statement of understanding where Dawson acknowledged that he knew his conduct was found to be unsatisfactory and he would be recommended for discharge (*Id*., Ex. C);

-Dawson's April 4, 2005 Acknowledgment of Options in which he expressed understanding that if he was found "unsuitable for further naval service, [he] may be required to reimburse the government for the cost of [his] education" (Dawson checked a preference for active duty being his method of reimbursement, but this was not binding on the Navy) (*Id*., Ex. A at 38.); and

-Dawson's written show cause statement of April 6, 2005 (not submitted as part of record).

reimbursement recommendation to be rescinded because it was "illegal and unjust." (*Id*. at 23.) A three-member panel of the BCNR reviewed Dawson's petition and declined Dawson relief in an October 12, 2006 letter. (*Id*. at 2-5.) The panel, in making its decision, did not conduct a hearing with Dawson but relied in part on (1) Dawson's petition and supporting documents (*Id*. at 23-97.); (2) Dawson's naval record, which listed Dawson's overall class standing as 775 out of 1024 (*Id*. at 22.); (3) a May 2, 2006 advisory opinion from the Staff Judge Advocate endorsing the Superintendent's disenrollment recommendation (*Id*. at 4-5.); and (4) Dawson's July 26, 2006 protest letter in response to the Staff Judge Advocate's advisory opinion (*Id*. at 6-7.).[4]

In bringing the instant action, Dawson does not seek readmission to the Academy. (Compl. ¶ 9.) Instead, Dawson seeks an invalidation of the BCNR recoupment decision through declaratory relief provided by an order from this court. (Compl. ¶¶ 1, 11.)

**I. Motion to Strike**

Dawson in his motion to strike asks that this court strike the Secretary's motion for summary judgment and supporting memorandum and exhibits because the Secretary's motion for summary judgment relies in part on Exhibits B (Dawson's 8/21/04 "Obligation/Recoupment

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[4] Dawson argued in his protest letter to the BCNR as well as his Complaint that his recoupment obligation should be rescinded in part because the Academy did not have the power to require reimbursement, and in making the reimbursement request, it violated the Academy's Conduct Manual by not discharging him properly. (Def.'s Mem., Ex. A at 6, 25; Compl. ¶ 10.) In responding to Dawson's protest letter, however, the Staff Judge Advocate, in his advisory opinion endorsing the Superintendent's disenrollment recommendation, agreed that the Academy did "not have the authority to assess a recoupment obligation in any disenrollment case, but merely recommends the method of meeting obligations to the government arising from educational benefits received from attendance at the Academy." (Def.'s Mem., Ex. A at 5.) The Defense Finance and Accounting Service ("DFAS"), Directorate of Debt and Claims Management, is responsible for military debt collection and sent a bill to Dawson on January 30, 2007. (*Id*., Ex. D.) The Secretary argues that because Dawson filed his Complaint before DFAS had billed him, the matter was not ripe for this court's consideration. (Def.'s Mem. at 3 n.4.) Because DFAS has since sent Dawson the final bill, this issue is now moot. *See Abbott Lab. v. Gardner*, 387 U.S. 136, 148-49 (1967), *overruled on other grounds by Califano v. Sanders*, 430 U.S. 99 (1977).

Acknowledgment"); C (Dawson's 4/4/05 "Statement of Understanding" that his conduct was found unsatisfactory and the Secretary would recommend his discharge from the Academy and recoupment of educational expenses); and D (Dawson's "Account Statement" from January 30, 2007 specifying his reimbursement amount). (Pl.'s Mem. in Supp. Mot. to Strike at 2.) Dawson contends that because these exhibits were not part of the administrative record (Exhibit A) considered by the BCNR when deciding whether to disenroll him from the Academy, the entirety of the Secretary's filings in support of its summary judgment motion should be stricken. (*Id*.)

A motion to strike under Federal Rule 12(f) is the appropriate remedy for the elimination of redundant, immaterial, impertinent, or scandalous matter in any pleading. 5C Charles Alan Wright & Arthur R. Miller, Fed. Prac. & Proc. § 1380 (3d ed. 2004). As noted by the Fourth Circuit, "Rule 12(f) motions are generally viewed with disfavor 'because striking a portion of a pleading is a drastic remedy and because it is often sought by the movant simply as a dilatory tactic.'" *Waste Mgmt. Holdings, Inc. v. Gilmore*, 252 F.3d 316, 347 (4th Cir. 2001) (citation omitted). "[A] motion to strike on the basis of irrelevancy should only be granted when it is clear that the material in question can have no possible bearing upon the subject matter of the litigation and the material may prejudice the other party." *Simaan, Inc. v. BP Prods. N. Am., Inc.*, 395 F. Supp. 2d 271, 278 (M.D.N.C. 2005) (citation omitted). Even if a Rule 12(f) motion were appropriately directed to a motion and memorandum (which is not a "pleading"), Dawson has not demonstrated to this court that Exhibits B-D are collectively "redundant, immaterial, impertinent, or scandalous" such as to warrant this court's disregard for the *entirety* of the Secretary's submissions.

In the Secretary's memorandum in support of his motion, he notes that the BCNR exclusively reviewed documents from Exhibit A in its decision-making process concerning Dawson, and the Secretary does not attempt to mislead the court to believe otherwise. (Def.'s Mem. at 2 n.1.)

The Secretary, in his response to Dawson's motion to strike, concedes that he did not, as he should have, file a motion to supplement the record to ask that this court consider materials outside of the administrative record. (Def.'s Resp. in Opp. to Pl.'s Mot. to Strike at 2-3.) *See Roetenberg v. Sec'y of the Air Force*, 73 F. Supp. 2d 631, 636 (E.D. Va. 1999) (courts review of final decision of military correction board is limited to administrative record). Accordingly, with regard to Exhibit B, the Secretary withdraws it since the administrative record contained in Exhibit A demonstrates Dawson's "knowledge and acceptance of an obligation for either enlisted service or debt repayment should he be discharged." (*Id*. at 2.) With regard to Exhibit C, the court agrees with the Secretary that since it is both referenced by and incorporated into the administrative record in the Superintendent's letter to the Secretary, (Def.'s Mem., Ex. A at 35), it should remain. The court further agrees with the Secretary that Dawson has no good reason to object to the inclusion of Exhibit D since, for purposes of the ripeness and justiciability of Dawson's claim, it demonstrates that Dawson received his reimbursement obligation from the Defense Finance and Accounting Service. (Def.'s Resp. in Opp. to Pl.'s Mot. to Strike at 3.)

In light of the fact that Exhibit B has been withdrawn, Exhibit C is incorporated by reference into Exhibit A, and the inclusion of Exhibit D in fact assists Dawson in bringing this action, this court denies Dawson's motion to strike.[5]

**II. Standards of Review**

[5] As it stands, this court does not rely on Exhibit C or D in reaching its decision except for the purpose of verifying that Dawson did indeed sign his 4/4/05 "Statement of Understanding" (Exhibit C) and receive a final "Account Statement" (Exhibit D) for the educational expenses he incurred at the Academy.

**A. Summary Judgment**

A court will grant summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law," Fed. R. Civ. P. 56(c). Only disputed issues of material fact under the governing substantive law affect the granting of a summary judgment motion. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A court will not consider irrelevant or unnecessary factual disputes. *Id*. A court is obligated to consider the facts and all reasonable inferences in the light most favorable to the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

Both the Secretary and Dawson cross-move for summary judgment based on the administrative record filed in this case. "When both parties file motions for summary judgment . . . [a] court applies the same standards of review." *McCready v. Standard Ins. Co*., 417 F. Supp. 2d 684, 695 (D. Md. 2006) (citing *Taft Broad. Co. v. United States*, 929 F.2d 240, 248 (6th Cir. 1991)). Furthermore, "each motion [will be considered by a court] separately on its own merits to determine whether either of the parties deserves judgment as a matter of law." *Rossignol v. Voorhaar*, 316 F.3d 516, 523 (4th Cir. 2003).

**B. BCNR Decision**

The extent of this court's review is limited to the determination of whether the BCNR's decision to deny Dawson's petition was arbitrary, capricious, an abuse of discretion, contrary to law or regulations, or unsupported by substantial evidence. 5 U.S.C. § 706(2).[6] Generally, a court

[6] In pertinent part, 5 U.S.C. § 706(2) states that a reviewing court shall:
hold unlawful and set aside agency action, findings, and conclusions found to be --
(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
(B) contrary to constitutional right, power, privilege, or immunity;

reviewing a decision made by a military correction board, including the BCNR, must conduct that review exercising an "unusually deferential application of the 'arbitrary and capricious' standard of the [Administrative Procedure Act]." *Musengo v. White*, 286 F.3d 535, 538 (D.C. Cir. 2002) (citing *Kreis v. Sec'y of the Air Force*, 866 F.2d 1508, 1514 (D.C. Cir. 1989)). "'Like appellate courts, district courts do not duplicate agency fact-finding efforts. Instead, they address a predominantly legal issue: Did the agency 'articulate a rational connection between the facts found and the choice made'?'" *Verplanck v. England*, 257 F. Supp. 2d 182, 187 (D.D.C. 2003) (quoting *James Madison Ltd. v. Ludwig*, 82 F. 3d 1085, 1096 (D.C. Cir. 1996)). Under the arbitrary and capricious standard, a "plaintiff has the burden of showing by cogent and clearly convincing evidence that the military decision was the product of material legal error or injustice." *Roetenberg*, 73 F. Supp. 2d at 636 (holding, *inter alia*, that former Air Force officer was indebted to the United States pursuant to 10 U.S.C. § 2005 for educational expenses because of inability to complete service requirement due to clandestine affair with ROTC instructor discovered subsequent to her commissioning as an officer).

**III. Motions for Summary Judgment**

**A.**

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(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
(D) without observance of procedure required by law;
(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or
(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

The Secretary contends that he is entitled to judgment as a matter of law because the BCNR, in denying Dawson's petition, did not act arbitrarily, capriciously, or contrary to law. (Def.'s Mem. at 4.) The Secretary argues that the administrative record clearly demonstrates Dawson was properly disenrolled from the Academy. (*Id*. at 7-8.) Succinctly stated, the Secretary argues that "[g]iven Dawson's violation of a direct order from his superior officer and inability to refrain from consuming alcohol and fulfill the obligation of his probation, [the Secretary's] decision did not constitute material error or injustice requiring BCNR relief." (*Id*. at 7.)

Dawson argues that he is not obligated to reimburse the United States or complete an enlisted service obligation because he was illegally separated from the Academy in breach of the conduct probation agreement he entered into following his first incident of misconduct. (Pl.'s. Mem. in Supp. Summ. J. Mot. [hereinafter "Pl.'s Mem."] at 7-12.) Alternatively, Dawson argues that the "Navy is estopped from reconsidering and increasing its original punishment" after Dawson "relied to his detriment on the original decision not to separate him and on the terms of his conduct probation." (*Id*. at 12-13.) As a fallback position, Dawson argues that the Navy is prevented from requiring recoupment because he was not determined to be unfit for enlisted service and he was not timely offered the option to enlist. (*Id*. at 15-17.)

**B.**

**1.**

Dawson argues that his separation from the Academy was illegal because he was separated for his 2004 incident of misconduct rather than his 2005 incident of misconduct, which by itself did not constitute a "major" conduct violation. (Pl.'s Mem. at 7-12.) During Dawson's February 17, 2005 hearing before the Commandant, however, Dawson acknowledged that his second incident of misconduct could result in his separation from the Academy, stating:

> When I decided to drink and I decided to come back late, I knew, I knew that I shouldn't have been drinking, and I knew that I had to be back on time . . . . There's no reason why anyone would, in hindsight, weigh drinking three beers and being late over a naval career and the opportunity to be at this institution.

(*Id*. at 45.) The bare facts, as gleaned through an investigation conducted as part of a preliminary inquiry into his 2005 incident of misconduct, show that Dawson knew what his responsibilities were in relation to his loss of class privileges – namely, that consumption of alcohol while under this status was prohibited – and acknowledged that he had engaged in misconduct. (Def.'s Mem., Ex. A at 63.) The investigating officer in fact wrote in his report that he found it "appalling that [Dawson could] violate punishment that was given by a superior officer." (*Id*.)

The administrative record following Dawson's first incident of misconduct shows that Dawson was informed during an August 4, 2004 counseling session with the Commandant that he was being given a "last chance" at the Academy through his conduct probation agreement, even though his "underage drinking and service discrediting public intoxication offenses" made him eligible for immediate separation from the Academy. (*Id.*, Ex. A at 57.) During this counseling session, the Commandant *explicitly* informed Dawson that an important component of his loss of class privileges status included abstaining from alcohol until August 30, 2005. Furthermore, Dawson was instructed by the Commandant to investigate and understand what "loss of class privileges" meant. (*Id*.) Dawson himself stated during his hearing before the Commandant following his 2005 incident of misconduct, "Sir, when you told me to find out what loss of class privileges meant, I thought – I looked up – I went over [midshipman ] reg[ulation]s . . . and tried to make clear to myself what it was. I mean I knew, especially after the conversation that we had, sir, that, I wasn't supposed to drink." (*Id*.) Dawson thus acknowledged that he was put on notice and clearly understood

that consumption of alcohol would constitute a violation that could jeopardize the privilege of remaining at the Academy and further result in either an enlistment or recoupment obligation.

It may be facially correct for Dawson in his summary judgment motion to argue that the 2005 incident of misconduct viewed by itself was not a "major" conduct violation.[7] However, when examined in the context of his counseling session with the Commandant, Dawson's own investigation of midshipman regulations and his understanding of the loss of class privileges, and the terms of his conduct probation agreement, it appears to this court that the BCNR did have grounds to uphold the Secretary's decision, based on the Commandant's recommendation endorsed by the Superintendent, to discharge Dawson from the Academy. There was indeed a rational connection between the facts surrounding Dawson's 2004 and 2005 incidents of misconduct and the choice the Secretary made to disenroll him from the Academy and recommend recoupment. *See, e.g.*, *Kreis*, 866 F.2d at 1511 (a court's task in reviewing a final action on a petition to a military correction board is to establish "only whether the Secretary's decision making process was deficient, not whether his decision was correct").

**2.**

[7] On this point, the court agrees with the Secretary that Dawson's 2005 incident of misconduct, which violated 7.5.07 of the Academy's Administrative Conduct Manual by being a violation of loss of class privileges, was appropriately treated by the Deputy Commandant as a 6000 series offense since "a violation of section 7.5.07 of the Manual has a variable 4000 to 6000 rating" and the Deputy Commandant had the discretion to determine where, within a 4000 to 6000 rating, he would place Dawson's offense. (Def.'s Mem. in Opp. Pl.'s Mot. for Summ. J. and Reply in Supp. Def.'s Mot. for Summ. J. at 6.)

Dawson argues in the alternative that the Navy is estopped from "increasing" his punishment for his 2004 misconduct because he detrimentally relied on the Commandant's decision to retain him at the Academy under the terms of his conduct probation agreement.

It is unlikely that an estoppel argument is available to Dawson as there is no evidence of affirmative misconduct on the part of the Academy. *See United States v. McCrackin*, 736 F. Supp. 107, 113 (D.S.C. 1990) (holding, *inter alia*, that Government was not estopped from seeking recovery of educational expenses from former Air Force Academy cadet because counsel's alleged failure to advise cadet of consequences of waiving his active-duty service commitment did not constitute affirmative misconduct). Nor are the other elements of equitable estoppel satisfied in this action.

"The elements of equitable estoppel are a definite misrepresentation by one party, intended to induce some action in reliance, and which does reasonably induce action in reliance by another party to his detriment." *United States v. Swick*, 836 F.Supp. 442, 445 (S.D. Ohio 1993) (holding, *inter alia*, that Air Force Academy cadet who was asked for recoupment of educational expenses following resignation stemming from controlled substance abuse failed to establish estoppel elements against government). Dawson's estoppel argument in this case is without merit because the record does not in any way indicate that any member of the Academy, either orally or in writing, made a misrepresentation to Dawson about his duties and obligations following his 2005 incident of misconduct. Furthermore, the record does not show any detrimental reliance on Dawson's part; rather, it indicates that Dawson understood the conditions under which he would be allowed to continue at the Academy.

To borrow an expression used by the Commandant during Dawson's February 17, 2005 conduct hearing, Dawson knew, in beginning his second class year at the Academy, that he was

being given a "second chance at life." (Def.'s Mem., Ex. A at 48.) In being given this second chance and signing his "Obligation/Recoupment Acknowledgment" on August 21, 2004 – executed just days after his counseling session with the Commandant informing him that alcohol consumption while under loss of class privileges status was prohibited – Dawson understood fully that he would be incurring an enlisted service obligation. (*Id*. at 36-37.) He also understood that the Secretary had the discretion to turn this obligation into a "direct recoupment" of educational expenses should Dawson be found in breach of his agreement to serve through "unsatisfactory conduct," which he was by virtue of his 2005 incident of misconduct. (*Id*.)

Based on the evidence in the record, this court agrees with the conclusion reached by the Staff Judge Advocate in his advisory opinion, and agreed with by the Secretary and the BCNR, namely:

> There is no basis for Mr. Dawson to be released from the recoupment obligation he incurred by commencing his second class year at the Academy, and then failing to complete the course of instruction due to his misconduct. He knowingly entered into an agreement with the United States Navy/Naval Academy that clearly defined his obligations. His case, moreover, shows no extraordinary circumstances or inequities other than those normally associated with being assessed a recoupment obligation.

(*Id*., Ex. A at 4-5.) Indeed, in previous cases, courts have agreed with the government that misconduct in violation of a contract agreement provided sufficient grounds for seeking reimbursement of educational expenses. *See, e.g., United States v. Bush*, 247 F. Supp. 2d 783, 789 (M.D.N.C. 2002) (holding, *inter alia*, that cadet with otherwise excellent academic record convicted of fourth degree criminal mischief for vandalizing used car dealership violated terms of ROTC scholarship contract and was obligated to reimburse government). In the rare instances where courts have not agreed with the government about the validity of a reimbursement obligation, it has been for reasons including a lack of adherence to disenrollment procedures or an absence of actual misconduct, circumstances not present in the instant action. *See, e.g.*, *Verplanck*, 257 F. Supp. 2d

at 189-191 (remanding case to Secretary for further investigation as to whether Academy, before making disciplinary decision, had properly advised midshipman who impermissibly used contact lenses to become a student naval aviator of his potential reimbursement obligation); *United States v. Gears*, 835 F.Supp. 1093, 1100 (N.D. Ind. 1993) (distinguishing insufficient aptitude from misconduct to hold that midshipman who could not meet fitness requirements at Naval Academy did not have reimbursement obligation).

**3.**

Dawson's fallback position that he was neither determined to be unfit for enlisted service nor timely offered an enlistment opportunity has no support in the record. Dawson was found by the Commandant, the Superintendent, the Secretary, and the BCNR to be unfit for enlisted service based on the decisions he made while enrolled at the Academy. Numerous witnesses giving testimony during Dawson's hearing before the Commandant, even those who *supported* his retention at the Academy, took serious issue with his decision-making ability. (*Id*., Ex. A at 7-12.) As stated by Dawson's Command Master Chief when giving testimony to the Commandant about why he believed Dawson should not be allowed to continue on at the Academy:

> He had total disregard for your orders and the Deputy's orders. If you were to retain him, he'll be out there leading young Sailors or Marines, setting the example. And what he has done between the first and second incident is not the example we want to have set.

(*Id*. at 53.)

Echoing these sentiments, the Superintendant's letter to the Secretary recommending Dawson's disenrollment concluded with the following statement: "Midshipman Dawson's lack of initiative in finding out or clarifying the conditions of the moral restraints imposed on him as a result of his prior separation level offenses, his admitted violations of his loss of class privileges status and his exercise of consistently poor judgment are indicative of his lack of suitability for

commissioning." (*Id*. at 8.) Examples such as these in the administrative record the BCNR reviewed when considering Dawson's petition show that the BCNR's denial of the petition was a reasonable judgment rooted in substantial evidence of record.

Dawson's point that he was not "timely" offered the opportunity to enlist overlooks that the Secretary was under no obligation to provide him with such an opportunity. *See McCrackin*, 736 F. Supp. 107 (upholding Secretary's determination that Air Force cadet was not eligible to serve an active duty obligation because of cadet's resignation following drug charges and therefore had to reimburse the United States pursuant to his ROTC contract). Dawson's "Obligation/Recoupment Acknowledgment" states that the Secretary may, in place of enlisted service, direct the recoupment of educational expenses. (Def.'s Mem., Ex. A at 37.)

**4.**

There is no evidence in the record that supports Dawson's "allegations of error and injustice." (Def.'s Mem., Ex. A at 2.) The Secretary made the determination, as was within his discretion, that Dawson's misconduct prevented him from receiving a commission and serving out his obligation through active duty. The BCNR, in reviewing the administrative record presented to it, was not acting arbitrarily or capriciously when it found that the Secretary had made a "satisfactory determination" that Dawson had breached his agreement to serve and was "unsuitable for enlisted service." (Def.'s Mem., Ex. A at 2-3.)

**IV. Conclusion**

For the reasons stated above, the Secretary's motion for summary judgment will be granted and Dawson's cross-motion for summary judgment will be denied, as well as his motion to strike. A separate order follows.

May 21, 2007
Date

/s/
Catherine C. Blake
United States District Judge

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF MARYLAND**

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|---|---|---|
| **JACK A. DAWSON,** | * | |
| | * | |
| **Plaintiff** | * | |
| | * | |
| **v.** | * | **Civil No. CCB-06-2885** |
| | * | |
| **DONALD C. WINTER,** | * | |
| ***Secretary of the Navy, et al.,*** | * | |
| | * | |
| **Defendants.** | * | |
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**AMENDED ORDER**

For reasons stated in the foregoing Memorandum, it is hereby **ORDERED** that:

1. the Plaintiff's motion to strike (docket entry no. 6) is DENIED;

2. the Defendants' Motion for Summary Judgment (docket entry no. 5) is GRANTED;

3. the Plaintiff's cross-motion for summary judgment (docket entry no. 7) is DENIED;

4. Judgment is entered in favor of the Defendants; and

5. the Clerk shall **CLOSE** this case.

May 21, 2007
Date

/s/
Catherine C. Blake
United States District Judge